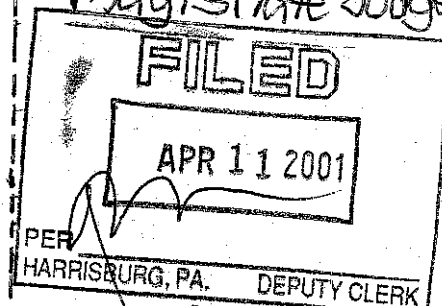


IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE,
Plaintiff,

vs. ORIGINAL

KENNETH D. KYLER, et al,
Defendants.



PLAINTIFF'S REPLY BRIEF TO DEFENDANTS
BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION
FOR AN ORDER REQUIRING PRISON CHAPLAIN
VOGEL AND OFFICER CHARLIE CRAIG TO SIGN
AFFIDAVITS FOR THE PLAINTIFF

COMES NOW the PLAINTIFF & Respondent in
above-entitled Civil Action, John Richard Jae, a Layman
Unlettered in the Arts & Sciences of the Law & Legal Proceeding
within the United States & now files his Plaintiff's Reply
to Defendants' Brief in Opposition to PLAINTIFF'S Motion
For An Order Requiring Prison Chaplain Rev. Vogel and
Charlie Craig to Sign Affidavits for the Plaintiff
herein, & who, avers, deposes & states:

On or About February 15, 2001, Plaintiff John
Richard Jae filed his Motion For An Order Requiring
Chaplain Rev. Vogel and Officer Charlie Craig to Sign Affidavits
For the Plaintiff & For Herein And
Brief In Support, herein this case

On or About March 20, 2001, Defendants, by Counsel, filed their Brief In Opposition to Plaintiff's Motion For Order Requiring Prison Chaplain Rev Vogel And Officer Charlie Craig To Sign Affidavits For The Plaintiff, herein this case.

In their Brief In Opposition to Plaintiff's Motion For An Order Requiring Prison Chaplain Rev Vogel And Officer Charlie Craig To Sign Affidavits For The Plaintiff, Defendants fail to respond and address facts and arguments which the Plaintiff raises therein in its Motion For An Order Requiring Prison Chaplain Rev. Vogel And Officer Charlie Craig To Sign Affidavits For The Plaintiff Herein And Brief In Support.

Instead they only argue, that, "Fed. R. Crim. P. 36.1(a) allows for the filing of affidavits to oppose a motion for summary judgment. Nowhere, in do the federal rules provide for the court to order parties or non-parties to sign affidavits, which they are willing to sign voluntarily. Plaintiff's motion, therefore, be denied. - - - - - The rules

contemplate this Court compelling answers to questions posed to persons as part of discovery. do not authorize this Court to compel the signing of affidavits. Plaintiff's motion should be denied, and, therefore, pursuant to Fed. R. Crim. P. 36.1(a), Defendants, by law, be deemed & held to have admitted the facts & arguments.

1/See Defendants' Brief In Opposition to Plaintiff's Motion For An Order Requiring Prison Chaplain Rev Vogel And Officer Charlie Craig To Sign Affidavits For The Plaintiff.

this Plaintiff's Motion For An Order Requiring Prison Chaplain Vogel And Officer Charlie Clary To Sign Affidavits For The Plaintiff Herein And Brief In Support, herein this case.

In their Brief In Opposition, Defendants claim;

Following the close of discovery, the defendants moved for summary judgment, and subsequently submitted a brief and documents in support of the motion. 2/

However, in reply to the above the Plaintiff avers submits, that, such is untrue and Defendant "lie" when they claim such, as discovery did close herein this case until January 17, 2000. Defendants filed their Motion For Summary Judgment on October 17, 2000 & their Brief supporting documents on December 5, 2000, herein this case.

Defendants next claim & argue, that:

Federal Rule 56 allows for the filing of Affidavits to oppose a motion for summary judgment. Nowhere, however, do the federal rules provide for the court to order parties or non-parties to sign

2/ See Defendants' Brief In Opposition To Plaintiff's Motion For An Order Requiring Prison Chaplain Rev. Vogel And Officer Charlie Clary To Sign Affidavits For The Plaintiff

affidavits, which they are not willing to sign voluntarily. Plaintiff's motion must, therefore, be denied. \Rightarrow

However, in reply to such, the Plaintiff avers & submits that, first of all, neither do the Federal rules prohibit ~~from~~ ordering parties or non-parties to sign affidavits, which they are not willing to sign voluntarily. The Federal rules just do not say either way, and, second of all, the Plaintiff never ~~dis~~claimed in his Motion For An Order Requiring Prison Chaplain Rev. Vogel And Officer Charlie Craig To Sign Affidavits For The Plaintiff Herein And Brief In Support, that, Rev. Vogel and Officer Craig were not willing to sign affidavits ~~for~~ for the Plaintiff at all, but what the Plaintiff stated & claimed therein in his Motion And Brief In Support, was that, "However, the Plaintiff ~~be~~ & therefore, avers & submits, that neither Rev. Vogel nor Officer Craig will voluntarily sign an affidavit for the Plaintiff herein, as they would both be concerned that they would get in trouble and do such ~~if~~ 4/ and, third of all, on Monday morning, March 26,

3/ See Defendants' Brief In Opposition To Plaintiff's Motion For An Order Requiring Prison Chaplain Rev. Vogel And Officer Charlie Craig To Sign Affidavits For The Plaintiff Herein.

2.

4/ See Plaintiff's Motion For An Order Requiring Prison Chaplain Rev. Vogel And Officer Charlie Craig To Sign Affidavits For The Plaintiff Herein And Brief In Support at 4.

the Plaintiff spoke with Officer Martin, an officer assigned to work the 6:00 A.M. - 2:00 P.M. shift here in the State Correctional Institution. Greene Special Management Unit and questioned him if he or any other correctional officer would voluntarily sign an affidavit for an Inmate-Plaintiff in a lawsuit in State or Federal Court, would they get in trouble for doing so and Officer Martin replied answered, "yes."

Defendants also claim & argue, that =

The rules contemplate this Court compelling answers to questions posed to persons as part of discovery. They do not authorize this Court to compel the signing of affidavits. Plaintiff's motion should be denied. S/

However, in reply to the above the Plaintiff argues & submits that, first of all, while the Rules may very well contemplate this Court compelling answers to questions posed to persons as part of discovery, there is nothing in the Rules which do not authorize this Court to compel non-parties to sign affidavits as to S/ See Defendants' Brief in Opposition to Plaintiff's Motion Order Requiring Prison Chaplain Rev. Vogel And Other Church Officials To Sign Affidavits For Plaintiff's Suit

Defendants erroneously & frivolously claim & argue
 in reality the Federal Rules neither state that the
 has or does not have such authority to compel
 the signing of Affidavits, as the Rules are silent on
 and, second of all, by their Brief in Opposition to
 Plaintiff's Motion For An Order Requiring Prison Chaplain
 Rev. Vogel And Officer Charitie Craig To Sign
 Affidavits For The Plaintiff & their arguments
 therein such, the Defendants are illegally
 and unconstitutionally attempting to get
 Court to unlawfully deny this Plaintiff's
 and necessary evidence/information which he
 in order to enable him to adequately, effectively,
 meaningfully respond to & address & combat
 Defendants' Motion For Summary Judgment And
 Memorandum Of Law In Support, hereto, and
 enable him to comply with & follow the provisions
 of Fed. R. Cr. P. 56(c) & (e) & the Defendants do this
 because they know that such Affidavits of Prison
 Chaplain Rev. Vogel And Officer Charitie Craig will
 further support & prove the allegations/facts of the
 Plaintiff's initial complaint & his argument
 against their Motion For Summary Judgment and
 that the Defendants and Ben Livingston III in Defen-
 Memorandum In Support of Motion For Summary Judgment
 6/ Plaintiff avers that notably absent from Defendants' Brief
 Opposition To Plaintiff's Motion For An Order Requiring Prison Chaplain
 Vogel And Officer Charitie Craig To Sign Affidavits For The Plaintiff
 is any Federal Court Case Cited in support of their

In the Unsworn Declaration of Ben C. Livingston, accompanying each herein.

Plaintiff furthermore avers & submits, that by Rule 56(e) of the Federal Rules of Civil Procedure,

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

This Plaintiff is attempting to comply with & meet the requirements of the above cited Rule & obtain Affidavits setting forth specific facts showing that there is a genuine issue for trial. In this case, however, the Defendants are illegally attempting to prevent this Plaintiff from doing so by their arguments in their Brief Opposition to Plaintiff's Motion For An Order Requiring Fr Chaplain Rev. Vogel And Officer Charles Craig To Sign Affidavits For Plaintiff herein. Plaintiff believes & therefore avers & submits this is because there is no case citations/federal authority able to support such a requirement. It is the Plaintiff's

Furthermore, Rule 56(f) of the Federal Rules of Civil Procedure, states:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or deposition to be taken or discovery to be had or may make such other order as is just.

Plaintiff avers & submits, that, the keywords are, "a may make such other order as is just" and, if such, Plaintiff contends & submits, that the Court "has" the authority and the "duty" to go in full, the Plaintiff's Motion For An Order Requiring Prison Chaplain Rev. Vogel And Officer Charles Craig Sign Affidavits For The Plaintiff, herein this case and that it would be an unfair & unjust prejudice manifest miscarriage of justice and an unconstitutional denial of due process of the law for this Court to, this Motion, as without such requested order, this Plaintiff "will" be unable to obtain such Affidavits from Prison Chaplain Rev. Vogel And Officer Charles Craig & thus he will be unconstitutionally deprived of relevant evidence which he needs to enable him

able to combat and oppose the "lies" and distort
material facts of Defendants Motion for Summary
Judgment And Memorandum of Law To Support
herein this case, and to enable him to
set forth specific facts showing that there
is a genuine issue for trial, herein this case
and that without such Affidavits he will be unable to

Even if this Court would hold that it does
not have the authority to compel/order re-
-parties to sign the Affidavits for the
Plaintiff, this Court can & should then order
discovery reopened herein this case for
sole purpose of permitting this Plaintiff
to obtain the relevant and necessary
information from Prison Chaplain Rev.
And Officer Charlie Craig by a deposition
upon written questions under Fed. R. Cr. P.
or Interrogatories under Fed. R. Cr. P. 33.

Based upon the above & foregoing facts
arguments, Plaintiff's Motion For An Order Requiring
Prison Chaplain Rev. Vogel And Officer Charlie Craig
to sign Affidavits for the Plaintiff should not
be denied, but should be granted in full forthwith. RESPECTFULLY

Dated: 4th APRIL 2001:

(S) ~~John Richard~~
MR. JOHN RICHARDSON
#BQ-3219
Sgt. Greene/CMU
175 PRISON DR.
Waynesboro, VA 22190
PLAINTIFF'S COUNSEL